

**SUBCHAPTER C : NOTICE REQUIREMENTS FOR
WATER USE PERMIT APPLICATIONS**

§§295.151-295.160
Effective May 20, 1997

§295.151. Notice of Application and Commission Action.

(a) At the time an application for a permit to use state water has been filed by the executive director with the chief clerk of the commission, the commission shall give notice by mail to those persons specified in §295.153 of this title (relating to Notice By Mail). At such time, the chief clerk shall furnish a copy of the notice to the applicant, and the applicant shall cause such notice to be published, pursuant to §295.152 of this title (relating to Notice By Publication).

(b) A notice of application and commission action shall:

- (1) state the name and address of the applicant;
- (2) state the date on which the application was received by the commission;
- (3) state the date the application was filed by the executive director with the chief clerk;
- (4) state that the executive director has determined that the application is administratively complete;
- (5) state the application number;
- (6) state the type of permit the applicant is seeking;
- (7) state the purpose and extent of the proposed appropriation of water;
- (8) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- (9) specify the time and location where the commission will consider the application;
- (10) give a general description of the location and area of any land to be irrigated; and
- (11) give any additional information the commission considers necessary.

§295.152. Notice By Publication.

(a) If notice by publication is required, the applicant shall cause the notice issued by the chief clerk to be published in a newspaper of general circulation within the section of the state where the source of water is located.

(b) The date of publication shall be on or before the date of publication directed by the chief clerk of the commission. In any event, the date of publication shall be not less than 30 days before the date set for commission consideration of the application.

§295.153. Notice By Mail.

(a) If notice by mail is required, the commission shall mail the notice by first-class mail, postage prepaid, to persons listed in this section for each type of application. The commission shall mail required notice not less than 30 days before the date set for commission consideration of the application.

(b) For an application for a permit pursuant to the Texas Water Code, §11.121, or for an amendment to a Texas Water Code, §11.121 permit, a certified filing, or a certificate of adjudication pursuant to the Texas Water Code, §11.122 and §295.158(b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed with the commission or its predecessor agencies;

(2) all navigation districts within the river basin concerned; and

(3) other persons who in the judgment of the commission might be affected.

(c) For an application for a permit pursuant to the Texas Water Code, §11.143, or for an amendment pursuant to the Texas Water, Code §11.122, to a Texas Water Code, §11.143, permit or a certificate of adjudication which authorizes diversions from a reservoir which is exempted under the Texas Water Code, §11.142, and pursuant to §295.158(b) of this title (relating to Notice of Amendments to Water Rights), notice shall be mailed to the following:

(1) each person whose claim or appropriation has been filed with the commission or its predecessor agencies and whose diversion point is downstream from the location of the dam or reservoir as described in the application; and

(2) other persons who in the judgment of the commission might be affected.

(d) For an application to amend a certified filing authorizing diversions from a reservoir which is exempted under the Texas Water Code, §11.142, which, if granted, will cause a change in the reservoir so that it would no longer be exempt under the Texas Water Code, §11.142, notice shall be mailed to the persons listed in subsection (b) of this section.

(e) For an application to authorize the use of state water for domestic and livestock use from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued, the commission shall issue such notice as it deems appropriate.

§295.154. Notice for Temporary Water Use Permit.

(a) For an application for a temporary water use permit for which a hearing is required, notice of the hearing shall be sent by first-class mail to each complainant under §295.181 of this title (relating to Provisional Disposition of Application for Temporary Permit) and to diverters of record with the commission who are located below the applicant's proposed point of diversion and who would, in the judgment of the commission, be affected by the applicant's withdrawals. The notice shall be mailed not less than 15 days (including Saturdays, Sundays, and holidays) prior to the date set for hearing.

(b) Notice of a hearing on an application for a temporary water use permit need not be published in any newspaper unless so ordered by the commission.

(c) Notice of a hearing on an application for a temporary water use permit shall contain a general statement regarding the proposed quantities, use, and period of use of the requested water, and a statement of the date, time, and place of the hearing.

(d) No mailed notice is required in connection with an application for an extension of time for a temporary permit.

§295.155. Notice for Interwatershed Transfers.

Notice of an application seeking to transfer water from one watershed to another shall be given in the manner provided for a water use permit application to the watershed which is the source of supply. In addition, notice shall be given to users of record in the receiving watershed who are located below the point of introduction. For purposes of this section, a watershed refers to a named river basin or coastal basin.

§295.156. Notice for Emergency Water Use Permits.

An emergency permit for the diversion and use of state water for a period of not more than 30 days under the Texas Water Code, §11.139, may be granted without the necessity of issuing the notice required for other permits issued by the commission.

§295.157. Notice of Hearing.

A hearing on an application may be held without the necessity of issuing further notice other than advising the applicant, executive director, public interest advocate and all persons who have in writing notified the commission of their interest in the application of the time and place where the hearing is to convene. The chief clerk of the commission will mail such notice to these persons not less than 10 days before the date of the hearing.

§295.158. Notice of Amendments to Water Rights.

(a) On motion of executive director.

(1) If the executive director determines to file a petition to amend a water right, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally

served on or mailed by certified mail to the water right holder at the last address of record with the commission.

(2) This notice shall be given at least 15 days before a petition is filed with the commission.

(b) Requiring mailed and published notice. Unless authorized by subsection (c) of this section, applications for amendments to permits, certified filings, or certificates of adjudication, including but not limited to those of the following nature must comply with requirements for a water use permit, including the notice requirements in the Texas Water Code, §11.132, and this subchapter:

(1) to change the place of use when other water users of state water may be affected;

(2) to increase an appropriation and/or rate or period of diversion;

(3) to change the purpose of use when the change would authorize a greater consumption of state water or would materially alter the period of time when state water could be diverted;

(4) to add points of diversion which would result in a greater rate of diversion or impair other water rights;

(5) to remove or modify the requirements or conditions of a water right which were included for the protection of other water rights;

(6) to change a point of diversion which may impair other water rights;

(7) to relocate or enlarge a reservoir; or

(8) to extend the period of duration of any term permit.

(c) Not requiring mailed and published notice.

(1) Only an application to amend an existing permit, certified filing, or certificate of adjudication which does not contemplate an additional consumptive use of state water or an increased rate or period of diversion and which, in the judgment of the commission, has no potential for harming any other existing water right, is subject to amendment by the commission without notice other than that provided to the record holder. Upon filing such an application, the commission shall consider whether additional notice is required based on the particular facts of the application.

(2) Applications of the following descriptions may not require additional notice:

(A) to cure ambiguities or ineffective provisions in a water right;

(B) to reduce an appropriation or rate of diversion;

(C) to change the place of use when there will be no increased use of state water and the change will not operate to the injury of any other lawful user of state water. If a water right is owned

by more than one party, all other parties will be notified of the proposed changes by certified mail and given two weeks to protest. If no protest is received, further notice will not be required;

(D) to change the point of diversion when the existing rate of diversion will not be increased and there are no interjacent water users of record between the originally authorized point of diversion and the new one, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(E) to add additional points of diversion where the existing rate of diversion will not be increased and there are no water users of record between any originally authorized point of diversion and the new one to be added, or when interjacent water users agree in writing to the amendment. If written agreements are not obtained, interjacent water users will be notified of the proposed change by certified mail and given two weeks within which to protest. If no protest is received, further notice will not be required;

(F) to increase the rate or period for diversion from a storage reservoir.

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§295.159. Notice of Extension of Time To Commence or Complete Construction.

(a) If the new date of proposed commencement of construction is more than four years from the date of issuance of the permit, or if the new proposed completion time is more than five years from the date of completion required in the original permit, notice of an application for extension of time shall be mailed and published as required by the Texas Water Code, §11.132 and §11.143, and §295.151 of this title (relating to Notice of Application and Commission Action), §295.152 of this title (relating to Notice By Publication), and §295.153 of this title (relating to Notice By Mail). The chief clerk shall mail notice of the public hearing to the same persons to whom notice of the application for the permit was mailed. The applicant shall be required to publish notice of the hearing in the same manner in which an applicant for a water use permit is required to publish notice of an application. No other notice is required.

(b) The notice of any application for an extension of time to commence or complete construction must provide that the commission shall also consider whether the appropriation shall be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay.

§295.160. Notice of Applications to Convey Stored Water.

If the commission has received a written statement of a proposed conveyance of stored water, it shall send notice to each diverter of record on the watercourse between the origin and terminus of the transit. The notice shall set forth the approximate time that delivery will be commenced and completed, the legal consequences that could result from the unlawful diversion and taking of such water in transit, and other details the commission considers appropriate. The expense of mailing notice shall be charged to the applicant. These provisions may be waived by the commission if an emergency condition exists and time does not permit following the procedure outlined. Further, the requirements of this section are not applicable if water is being released from upstream storage under order of the commission.

Disposition Table
Chapter 295 - Water Rights, Procedural
Subchapter C : Notice Requirements for Water Use Permit Applications

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This table is to track sections during and after rule revisions. The column on the left lists the current sections prior to the revision. The column on the right lists where the section is proposed to end up in the final adoption.

Old Section	New Section
295.158(c)(2)(A) & 295.158(d)	50.45